PATENT

Atty Docket No.: 10011548-1
App. Ser. No.: 10/076,635

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the amendments above and the following remarks. By virtue of the amendments above, Claims 1, 6, 17, 25, 28, 32, and 38 have been amended in minor respects. As such, Claims 1-38 are currently pending in the present application of which Claims 1, 17, and 32 are independent.

No new matter has been introduced by way of the claim amendments; entry thereof is therefore respectfully requested.

Allowable Subject Matter

The indication that Claims 2-16, 18-31, and 33-38 are objected to as being dependent upon a rejected base claim but that these claims would otherwise be allowable is noted with appreciation. It is respectfully submitted, however, that all of the pending claims are allowable over the cited documents of record for at least the following reasons.

Drawings

The indication that the drawings filed on February 19, 2002 have been accepted is noted with appreciation.

Claim Rejection Under 35 U.S.C. §112, 2nd paragraph

The Official Action sets forth a rejection of Claim 32 as allegedly being indefinite. More particularly, the Official Action asserts that the terms "capable of" are "determined by the examiner to be vague and indefinite." The Applicant respectfully disagrees with this assertion.

As stated in MPEP 2173.05(g), citing to *In re Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976), "[i]n a claim that was directed to a kit of component parts **capable of** being assembled, the Court held that limitations such as "members adapted to be positioned" and "portions...being resiliently dilatable whereby said housing may be slidably positioned" serve to precisely define present structural attributes of interrelated component parts of the claimed assembly." (emphasis added).

In an effort to further prosecution of the present application, however, the Applicant has amended Claim 32 to replace the terms "capable of" with the term "for". The Examiner is therefore respectfully requested to withdraw the rejection of Claim 32.

Claim Rejection Under 35 U.S.C. §101

The Official Action sets forth a rejection of Claims 1-38 as allegedly failing to comply with the provisions of 35 U.S.C. §101. More particularly, the Official Action alleges that Claims 1-38 are not within "the technological arts" defined in 35 U.S.C. §101. This rejection is respectfully traversed because, as held in *Ex Parte Lundgren*, Appeal No. 2003-2088 (Bd. Pat. App. & Inter. 2005), "there is currently no judicially recognized separate "technological arts" test to determine patent eligible subject matter under §101. We decline to create one."

However, to further prosecution of the present application, Applicant has amended Claims 1, 17 and 32. For at least the foregoing reasons, the Examiner is therefore respectfully requested to withdraw the rejections of Claims 1, 17, and 32 and the claims that depend therefrom.

Claim Rejection Under 35 U.S.C. §102

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

> Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the cited reference fails to anticipate the claimed invention and, thus, the claimed invention is distinguishable over the cited reference.

Claims 1, 17, and 32 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by the disclosure contained in U.S. Patent No. 4,989,417 to Markiewicz. This rejection is respectfully traversed because Markiewicz fails to disclose each and every element claimed in Claims 1, 17, and 32.

More particularly, Markiewicz fails to disclose, *inter alia*, a computer-implemented method or system to design a layout of an Internet Datacenter (IDC). In addition, Markiewicz fails to disclose that the IDC is defined, in a computer, as a collection of cells nor means for defining the IDC as a collection of cells. Instead, Markiewicz discloses a cold storage warehouse 10 having cold storage cells 12 "for receiving and storing processed frozen food products at extremely low temperatures." Abstract.

PATENT

Atty Docket No.: 10011548-1
App. Ser. No.: 10/076,635

For at least the foregoing reasons, it is respectfully submitted that Markiewicz fails to disclose each and every element claimed in Claims 1, 17, and 32 and thus cannot anticipate these claims. The Examiner is therefore respectfully requested to withdraw the rejection of Claims 1, 17, and 32 and to allow these claims.

Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: December 8, 2005 By

Timothy B. Kang
Registration No.: 46,423

MANNAVA & KANG, P.C.
8221 Old Courthouse Road
Suite 104
Vienna, VA 22182
(703) 652-3817
(703) 880-5270 (facsimile)